

# Fair Political Practices Commission

## Memorandum

**To:** Chairman Randolph, Commissioners Blair, Downey, Karlan and Knox

**From:** John W. Wallace, Assistant General Counsel  
Luisa Menchaca, General Counsel

**Subject:** September 2004 Work Plan Revisions

**Date:** August 23, 2004

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### A. INTRODUCTION

Each year the Commission approves a regulatory work plan for the next calendar year.<sup>1</sup> The plan provides for quarterly work plan revisions. Attached is the September update to the regulatory work plan for calendar year 2004 (attachment 1). Of the 22 substantive projects on the 2004 regulation calendar, 15 have been completed and 7 are left to complete for the remainder of the calendar year.

### B. PROPOSED REVISIONS

No proposed revisions to report.

### C. SPECIAL ISSUE: REGULATION 18901

**Introduction:** Section 89001 states that “[n]o newsletter or other mass mailing shall be sent at public expense.” When this section was enacted in 1988, the Commission realized that the sweeping language of the statute would prohibit many mailings customarily sent by governmental agencies such as mailing of tax notices, tax refund checks, community college schedules, sample ballots and notices of changes in regulations. The Commission also recognized that a literal reading of the statute would completely ban an officeholder from communicating by mail to his or her constituents. In order to give the statute a more common sense application, the Commission adopted current regulation 18901 (attachment 2) in December of 1989.

Senator Ross Johnson has asked that the Commission amend regulation 18901 to prohibit what he considers to be “puff” pieces, items prepared by an agency independent of the elected officer, but which make positive statements favoring the elected officer. In addition, at its June 2000 meeting, the Commission considered a request from CalPERS to review the mass mailing regulation. CalPERS petitioned the Commission to amend the roster listing exception of

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<sup>1</sup> See staff memorandum dated December 1, 2003, *Approval of 2004 Regulatory Priorities*.

regulation 18901, allowing CalPERS to distribute a group photo of the CalPERS Board of Administration as part of any permitted mass mailing. CalPERS believed the amendment should apply to all boards, bodies, commissions and councils. The Commission rejected the request.

**Update:** On June 14, 2004, staff held an interested persons meeting to solicit public input concerning possible amendments to regulation 18901. In attendance were representatives of the following: private law firms, city ethics commissions, the Assembly and the Senate, Los Angeles County Counsel, and the Office of Senator Ross Johnson. After a discussion of the problems with the current regulation, consensus was that the regulation was working fairly well as written and that amendment should be approached cautiously.

**Recommendation:** Staff believes that the statute and regulation currently control the misuse of publicly funded mass mailings while balancing the needs of elected officials to inform and communicate with the public. The current version of the regulation has been in place since 1990 and many of the important definitions in the current version of the regulation have been used consistently since the 1980s. The Commission in the past has chosen not to reopen the mass mailing regulation. We recommend that the Commission not pursue the amendment of regulation 18901 as a regulatory project.

## ATTACHMENT